A **INTEGRATED TECHNOLOGIES DISTRIBUTION SDN BHD**

v.

B **PATIMAS COMPUTER SYSTEMS SDN BHD**

COURT OF APPEAL, PUTRAJAYA
KN SEGARA JCA
HISHAMUDIN MOHD YUNUS JCA
AZAHAR MOHAMED J
C [CIVIL APPEAL NO: W-02(IM)-1628-09]
24 MAY 2011

CIVIL PROCEDURE: *Summary judgment - Appeal against - Whether there were triable issues - Failure to provide services - Interest*
D *on judgment debts - Whether not a plain and obvious case for summary judgment - Rules of the High Court 1980, O. 14, O. 42 r. 12*

This was the appellant's appeal against the decision of the High Court allowing the respondent's application to enter final judgment pursuant to O. 14 Rules of the High Court 1980
E ('RHC') against the appellant. The appellant averred that its appeal should be allowed as the following issues were plainly triable: (i) the appellant had shown that the respondent had failed to provide computer services for the period from January 2004 to June 2004;
F (ii) the High Court judge erred in awarding judgment for the sum of RM345,228.38 as the parties had never agreed to interest at 18% per annum on any alleged outstanding amounts; and (iii) the High Court judge erred in awarding interest at 18% per annum on the judgment sum as it contravened O. 42 r. 12 RHC.

G **Held (allowing the appeal with costs)**
Per Azahar Mohamed J delivering the judgment of the court:

(1) Once the appellant had raised the fact that the services were
H not rendered for the period between January 2004 and June 2004, it was then incumbent upon the respondent to prove that services were in fact rendered for the period in question. The respondent surely must have the worksheets and other documents to show what services it had provided. However,
I the affidavit in support of the summary judgment application did not provide any documentary evidence proving that the respondent did provide the services. (para 6)

(2) The claim for RM345,228.38 was a claim for interest at 18% on the alleged outstanding sum until 31 May 2007. There was, however, no agreement between the parties, upon conclusion of the contract, that the respondent could impose an interest of 18% per annum on any alleged outstanding amounts. Furthermore, the imposition of the interest of 18% for the post-judgment period was a contravention of O. 42 r. 12 RHC, which provides for an interest rate of (or not exceeding) 8% per annum for said period. (paras 7 & 8)

(3) For the reasons stated, this was not a plain and obvious case in which summary judgment in the terms prayed for should be granted to the respondent. (para 9)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi membenarkan permohonan responden untuk mencatatkan penghakiman muktamad menurut A. 14 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') terhadap perayu. Perayu menghujahkan bahawa rayuannya seharusnya dibenarkan disebabkan isu-isu berikut jelasnya perlu dibicara: (i) perayu telah menunjukkan bahawa responden telah gagal menyediakan perkhidmatan komputer bagi tempoh dari Januari 2004 hingga ke Jun 2004; (ii) hakim Mahkamah Tinggi khilaf dalam memberikan penghakiman bagi jumlah RM345,228.38 kerana pihak-pihak tidak pernah bersetuju menetapkan faedah pada 18% setahun atas mana-mana jumlah yang dikatakan belum dijelaskan; dan (iii) hakim Mahkamah Tinggi khilaf bila memberikan faedah pada 18% setahun atas jumlah penghakiman kerana ia melanggar A. 42 k. 12 KMT.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Azahar Mohamed H menyampaikan penghakiman mahkamah:

(1) Setelah perayu menimbulkan hakikat bahawa perkhidmatan tidak diberikan bagi tempoh di antara Januari 2004 dan Jun 2004, ia menjadi kewajipan responden untuk membuktikan bahawa perkhidmatan sebenarnya telah diberikan bagi tempoh tersebut. Responden semestinya mempunyai lembaran kerja dan dokumen-dokumen lain untuk menunjukkan apa perkhidmatan yang disediakan olehnya. Walaupun begitu, afidavit sokongan untuk permohonan penghakiman terus tidak menyediakan apa-apa keterangan dokumentari yang membuktikan bahawa responden telah menyediakan perkhidmatan tersebut.

A **(2)** Tuntutan untuk RM345,228.38 merupakan suatu tuntutan bagi faedah sebanyak 18% atas jumlah yang dikatakan belum dijelaskan sehingga 31 Mei 2007. Walaupun begitu, tiada persetujuan di antara pihak-pihak, selepas kontrak disempurnakan, bahawa responden boleh mengenakan faedah
B sebanyak 18% setahun atas mana-mana jumlah yang dikatakan belum dijelaskan. Lagipun, faedah sebanyak 18% yang dikenakan bagi tempoh selepas penghakiman adalah suatu pelanggaran A. 42 k. 12 KMT, yang memperuntukkan kadar faedah sebanyak (atau tidak melebihi) 8% setahun bagi tempoh
C tersebut.

(3) Bagi sebab-sebab yang dinyatakan, ini bukanlah kes yang jelas dan nyata di mana penghakiman terus dalam terma-terma yang diminta seharusnya diberikan kepada responden.

D **Case(s) referred to:**
Lee Tain Tshung v. Hong Leong Finance Bhd [2000] 4 CLJ 15 CA ***(refd)***
Malayan Insurance (M) Sdn Bhd v. Asia Hotel Sdn Bhd [1987] 1 CLJ 246; [1987] CLJ (Rep) 182 SC ***(refd)***

E **Legislation referred to:**
Rules of the High Court 1980, O. 14, O. 42 r. 12

For the appellant - R Harikannan; M/s Jayadeep Hari & Jamil
For the respondent - Jasbeer Singh Kaura (Nur Hakimah Mohamad with him); M/s Jasbeer, Nur & Lee

F *[Appeal from High Court, Kuala Lumpur; Writ Summons No: S5-22-820-2007]*

Reported by Suresh Nathan

G

JUDGMENT

Azahar Mohamed J:

H **[1]** This was an appeal by the appellant (the defendant in the High Court) against the decision of the learned High Court Judge who had on 13 July 2009 allowed the respondent's (the plaintiff in the High Court) application to enter final judgment pursuant to O. 14 of the Rules of the High Court 1980 (the RHC) against
I the appellant for the outstanding principal sum of RM780,749.08,

interest of RM345,228.35 calculated till 31 May 2007 and further continuing interest at the rate of 18% per annum on the principal sum from 1 June 2007 till full realization. A

[2] We heard the appeal on 7 April 2011, wherein at its conclusion we unanimously allowed it with costs in the sum of RM10,000 to the appellant and we accordingly set aside the order of the learned High Court Judge. We now give our reasons for so deciding. B

[3] It was the case of the respondent that based on the appellant's request, who was previously known as HP Technologies Sdn Bhd, the respondent provided computing services to the appellant. The appellant thereupon agreed to accept the said services from the respondent from time to time. The appellant's request for the aforesaid computing services was made through "Purchase Order No. HPDtek-04-1728 dated 4 October 2004" to the respondent. The respondent and the appellant then entered into an agreement known as "Maintenance Support Services Agreement" dated 1 November 2004. The respondent contended that it had already rendered the said computing services to the appellant and delivered the invoices and account statements to the appellant. The respondent also alleged that the appellant had only made part payment in the sum of RM50,000 to the respondent and the appellant had failed, refused and/or neglected to make full payment to the respondent. Hence, the respondent claimed against the appellant for the outstanding principal amount of RM780,749.08, interest of RM345,228.35 calculated till 31 May 2007 and further continuing interest at the rate of 18% per annum on the principal sum from 1 June 2007 till full realization. C D E F G

[4] It is a well settled principle that an appeal against an O. 14 judgment is a rehearing and this court in so hearing the appeal has to consider the affidavit evidence filed in support of the application and the affidavits in reply in order to determine whether or not there is a triable issue in the matter. An O.14 procedure is not intended to shut out a defendant. Summary judgment orders should only be made in very clear cases (*Malayan Insurance (M) Sdn Bhd v. Asia Hotel Sdn Bhd* [1987] 1 CLJ 246; [1987] CLJ (Rep) 182). H I

[5] Before us, the appellant contended that there were plainly triable issues in this case and therefore the appeal should be allowed. The appellant's appeal was largely grounded and premised as follows:

1. That the appellant had raised a triable issue in that the appellant has shown that the respondent had failed to provide the services for the period between January 2004 and June 2004;

2. That the learned High Court Judge erred in awarding judgment for the sum of RM345,228.38 as parties had never agreed to interest at 18% per annum on any alleged outstanding amounts; and

3. That the learned High Court Judge erred in awarding interest of 18% per annum on the judgment sum as it contravened O. 42 r. 12 of the RHC.

[6] On the first ground, the learned High Court Judge held that the defence was one of bare denials unsupported by documentary evidence. We do not agree. We have closely scrutinized all the affidavits and the documents contained in the appeal record. The appellant had exhibited a letter from Sepakat Computer Consultant Sdn Bhd (Sepakat) dated 25 January 2007. Among others, the letter clearly refers to the provision of Maintenance services of HP9000 Unit Server for the period between January to December 2004 at Jabatan Ukur dan Pemetaan Malaysia. Sepakat being the Main Contractor had alleged that no provisions of services were rendered for the period between January 2004 to June 2004. It is important to bear in mind that the appellant in its affidavit has averred that Sepakat had appointed the appellant company and that it then subcontracted the entire works to the respondent. In our view, once the appellant had raised the fact that the services were not rendered for the period between January 2004 to June 2004, it is then incumbent upon the respondent to prove that services were in fact rendered for the period in question. The respondent surely must have the work sheets and other documents to show what services it had provided. The affidavit in support of the summary judgment application did not provide any documentary evidence to prove that the respondent did provide the services.

[7] We now turn to the respondent's claim for the amount of RM345,228.38. The claim for RM345,228.38 was a claim for interest at 18% on the alleged outstanding sum until 31 May 2007. Now, the interest of 18% can only be awarded if the parties had agreed to the imposition of such an interest. The Maintenance Support Agreement which was signed by both parties does not provide for any interest to be charged if any amount is outstanding. In our judgment, it is clear that when the contract was concluded, there was no agreement that the respondent could impose an interest of 18% per annum on any alleged outstanding amounts.

[8] Further on this point, O. 42 r. 12 of the RHC clearly provides that "every judgment sum shall carry an interest rate of 8% per annum or such other rate not exceeding the aforesaid rate as the court directs (unless the rate has been otherwise agreed upon between parties) such interest to be calculated from date of judgment to date judgment is satisfied". The learned High Court Judge can only award post judgment interest above 8% if the parties have agreed to the same (see: *Lee Tain Tshung v. Hong Leong Finance Bhd* [2000] 4 CLJ 15). The imposition of the interest of 18% for the post judgment period is therefore a contravention of O. 42 r. 12 of the RHC.

[9] For the reasons stated, we were of the view that this was not a plain and obvious case in which a summary judgment in terms prayed for should be granted in favour of the respondent. In the result we allowed the appeal with costs.